

**REMARKS**

Upon entry of the foregoing amendments, claims 1-4, 14-21, 23-28, 30-40 and 49 are pending in the application. In response to the Office Action, Applicants have amended claims 1, added new claim 49 and cancelled claims 14. No new matter was added to the claimed invention. Support for amended claim 1 can be found in paragraph [0060] of the specification. Support for new claim 49 can be found in paragraph [0084]. Reconsideration of the captioned application in light of the foregoing amendments and remarks is respectfully requested.

**Claims Rejection under 35 U.S.C. § 102(b) Patil et al. (US 4,299,501)**

Claims 1, 21-26, and 30-40 are rejected under 35 U.S.C. § 102(b) as being anticipated by Patil et al. Applicant respectfully traverses this basis for §102 rejection. Patil discloses a semi soli dispersions and a method “for preparing semisolid dispersios, i.e.creams, jellies, ointments and the like, consisting of a three-step batch operation whereina hot oil phase and hot aqueous phase are brought together , thoroughly mixed to cause the two phases to form a substantially homogeneous...” (see column 1, lines 7-14). Water is an essential component in Patil et al (see examples 1-4, columns 3-5). On the other hand, the pending claims, as currently amended, are non-aqueous liquid compositions. Furthermore, claim 1, as currently amended, includes specific antibacterial agents. None of them were identified in Patil et al. Applicants respectfully submit that claims as currently amended do not overlap with the teaching in Patil et al. For these reasons, withdrawal of the rejection under this ground is respectfully requested.

**Claims Rejection under 35 U.S.C. § 103(a) Patil et al. (US 4,299,501) in view of Teagarden (US 2002/0110561)**

Claims 1-4, 14-21, 23-28, and 30-40 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Patil et al. (US 4,299,501) in view of Teagarden (US 2002/0110561). In making this rejection the Examiner states that Patil discloses semisolid dispersion that reads on instant claims 1, 21 and 23-26. For the same reasons stated above, Applicants respectfully submit that claims as currently amended do not overlap with the teaching in Patil et al, therefore, Patil does not reads on instant claims 1, 21 and 23-36. Withdrawal of the rejection under this ground is

respectfully requested. The Examiner further states that Teagarden in paragraph 0038 teaches a carrier which reads on the definition of amphipathic oil in claim 21 of the instant application. For convenience paragraph 0038 of Teagarden is quoted in its entirety below.

[0038] "Liquid carriers" include triglyceride fats and oils, including those derived from vegetable, animal, and marine sources. In practice it is preferred that the liquid carrier is non-aqueous, although the use of aqueous carriers is contemplated. The liquid carrier may be fully saturated, partially or fully unsaturated and may be deemed an "oil" (which may be naturally occurring or synthetic) or a "non-oil". Examples of liquid carriers which are partially or fully unsaturated hydrocarbons include, but are not limited to naturally occurring oils such as castor oil, safflower oil, cottonseed oil, corn oil, olive oil, cod liver oil, almond oil, avocado oil, palm oil, sesame oil, peanut oil, and soybean oil. By way of example cottonseed oil is available in a preparation of 70% unsaturated fatty acids (Sigma, St. Louis, Mo.). Examples of fully saturated liquid carriers include, but are not limited to, esters of medium to large chain fatty acids (e.g., fatty acid triglycerides with a chain length of about C<sub>6</sub> to about C<sub>24</sub>). Mixtures of fatty acids are split from the natural oil (e.g., coconut oil, palm kernel oil, babassu oil, etc.) and are refined. In some embodiments, about C<sub>8</sub> to about C<sub>12</sub> fatty acid medium chain triglycerides (MCT) are useful. These saturated vehicles are comprised of capric acid (about 20 to about 45%) and caprylic acid (about 45 to about 80%). Fully saturated liquid carriers include, but are not limited to, saturated coconut oil (which typically includes a mixture of lauric, myristic, palmitic, capric and caprylic acids), including those sold under the MIGLYOL trademark from Huls and bearing trade designations 810, 812, 829 and 840. Also noted are the NeoBee<sup>TM</sup> products sold by Drew Chemicals. Isopropyl myristate is another example of a non-oxidizing vehicle of the current invention. Examples of synthetic oils include tri-glycerides, or propylene glycol di-esters of saturated or unsaturated fatty acids having from 6 to 24 carbon atoms. Such carboxylic acids are meant to comprise those carboxylic acids having from 6 to 24 carbon atoms such as, for example hexanoic acid, octanoic (caprylic), nonanoic (pelargonic), decanoic (capric), undecanoic, lauric, tridecanoic, tetradecanoic (myristic), pentadecanoic, hexadecanoic (palmitic), heptadecanoic, octadecanoic (stearic), nonadecanoic, hexadecanoic (palmitic), heptadecanoic, octadecanoic (stearic) nonadecanoic, eicosanoic, heneicosanoic, docosanoic and lignoceric acid. Examples of unsaturated carboxylic acids include oleic, linoleic, linolenic acid and the like. It is understood that the tri-glyceride vehicle may include the mono-, di-, or triglyceryl ester of the fatty acids or mixed glycerides and/or propylene glycol di-esters wherein at least one molecule of glycerol has been esterified with fatty acids of varying carbon atom length. Some non-limiting examples of "non-oils" include polyethylene glycol (PEG) and aqueous based vehicles.

The issue presented by this rejection is whether or not the carrier described in Teagarden is a polyglycolized glyceride prepared by an alcoholysis reaction of natural triglycerides with polyethylene glycols. Teagarden states that the carrier may be a "non-oil." Polyethylene glycol (PEG) is an example of a "non-oil." Accordingly, polyethylene glycol could be a component of the carrier of Teagarden. There is nothing in Teagarden to suggest that, if polyethylene glycol is included as a component of the carrier, the mixture is treated in a manner which would cause an alcoholysis reaction. The carrier of Teagarden could also include propylene glycol di-esters and aqueous based vehicles. Neither propylene glycol di-esters nor aqueous based vehicles suggest a polyglycolized glyceride.

As set forth above Patil relates to a water containing emulsion composition. Since water is a key component of an emulsion, Patil provides no suggestion of a non-aqueous formulation. In order to establish a case of obviousness, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings

The person skilled in the art will not arrive at Applicants' invention by simply combining Patil and Teagarden. Instead the person skilled in the art would have to leave out the key emulsion forming step of Patil. There is no motivation in either reference that the combination would have the low interfacial tension, and greater stability than reference compositions. For this reason, reconsideration under this ground is respectfully requested.

If the Examiner believes that personal communications will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Respectfully submitted,

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